

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MSC MEDITERRANEAN SHIPPING
COMPANY HOLDING S.A.,

Plaintiff,

-against-

FORSYTH KOWNACKI LLC, and
MICHAEL KOWNACKI,

Defendant.
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DOC#
FILED: 10/27/2016
Index No. 16-cv-8103 (LGS)

~~PROPOSED~~ ORDER FOR PRELIMINARY INJUNCTION

WHEREAS, Plaintiff MSC Mediterranean Shipping Company Holding S.A., (“MSC” or “Plaintiff”) moved by order to show cause pursuant to Federal Rule of Civil Procedure 65 for a temporary restraining order and preliminary injunction enjoining Defendants Forsyth Kownacki LLC (“FK”) and Michael Kownacki (“Kownacki” and, collectively, “Defendants”) from disclosing MSC’s confidential and proprietary financial and business information in violation of their undisputed contractual duties, and a preliminary injunction requiring Defendants to return and destroy all such confidential information in their possession;

WHEREAS, the Court entered an Order on October 18, 2016, restraining Defendants from, *inter alia*, disclosing, transferring, or providing in any form whatsoever to any third party any confidential information previously supplied by or on behalf of MSC to Defendants (the “Temporary Restraining Order”), and ordered that Defendants appear before this Court on October 27, 2016 to show cause why an order granting Plaintiff a preliminary injunction should not be granted;

WHEREAS, Defendants were served with the Temporary Restraining Order, Summons, Complaint and all supporting papers, via email correspondence on October 17 and 18, 2016; via delivery to Defendant Kownacki's last-known address on October 19, 2016; and via delivery to

Defendant FK's registered agent on October 19, 2016; *and the Defendants had failed to submit any papers in opposition to the motion and*
The Court finds the following: *I have failed to agree to oppose the motion,*

1. Plaintiff is likely to succeed in showing: (1) that the Non-Disclosure Agreement and Financing Agreement are binding and enforceable; (2) that the Non-Disclosure Agreement and Financing Agreement require Defendants not to disclose MSC's confidential and proprietary, business and financial information and *the Non-Disclosure Agreement requires the Defendants* to return and/or destroy MSC's confidential information upon MSC's request; and (3) that Defendants have engaged in an anticipatory breach of these agreements by threatening to disclose MSC's confidential and proprietary business and financial information and breached the *Non-Disclosure Agreement* agreements by refusing to return and/or destroy the confidential information in their possession, *despite request,* and

2. The disclosure of MSC's confidential and proprietary business information and/or trade secrets will result in immediate and irreparable injury to Plaintiff if the relief requested is not ordered; and

3. The harm to Plaintiff from denial of the preliminary injunction outweighs the harm to Defendants' legitimate interests against granting such an order; and

4. Entry of an order other than a preliminary injunction would not adequately preserve Plaintiff's right to confidentiality under the Non-Disclosure Agreement and Financing Agreement entered into by Plaintiff and Defendants.

IT APPEARING to the Court that Defendants are threatening to disclose MSC's confidential financial and proprietary information, and will continue to carry out such acts unless

restrained by Order of the Court, this Court finds that entry of a preliminary injunction is necessary and appropriate.

NOW THEREFORE, IT IS HEREBY ORDERED that, pursuant to Rule 65 of the Federal Rules of Civil Procedure, ~~Section 6210 of the New York Civil Practice Law and Rules~~, and New York common law, Defendants, their officers, directors, agents, employees, representatives, successors or assigns, and all persons acting in concert or in participation with any of them, or having knowledge of this Order by personal service or otherwise, are hereby restrained and enjoined from:

1. disclosing any confidential information previously supplied by or on behalf of MSC to Defendants, including but not limited to MSC's financial information, all materials marked or designated as Confidential, and any other confidential or proprietary business information, or from transferring or providing MSC's confidential information in any form whatsoever to any third party.

IT IS FURTHER ORDERED that, consistent with the terms of the Non-Disclosure Agreement executed by and between the parties, Defendants shall return to MSC all confidential information previously supplied by or on behalf of MSC to Defendants, destroy or permanently erase all copies of such confidential information made by Defendants, and use all reasonable efforts to ensure that anyone to whom Defendants have supplied any confidential information through any unauthorized disclosure of such information destroys or permanently erases that confidential information.

IT APPEARING to the Court that Defendants are threatening to disclose MSC's confidential financial and proprietary information, and will continue to carry out such acts unless restrained by Order of the Court:

Defendants are hereby given further notice that they may be deemed to have actual notice of the issuance and terms of such preliminary injunction and any act by them or anyone of them in violation of any of the terms thereof may be considered and prosecuted as contempt of this

Court. *The foregoing constitutes the Court's Finding of Fact and Conclusions of Law.*
IT IS SO ORDERED.

DATED this 27 day of October, 2016

Hour: 4⁰⁷ a.m./p.m.

By:

[Signature]
JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE

Part I

The bond on the temporary restraining order in the amount of \$1,000 is continued as security for the preliminary injunction.

so ordered
[Signature]
10/27/16 U.S.D.J.